

**State Public Integrity Commission
MINUTES
November 19, 2013 MEETING**

1. **Call to Order:** 10 a.m. Present: Dr. Wilma Mishoe, Chair; William Tobin, Commissioners: William Dailey; Mark Dunkle, Esq.; Jeremy Anderson, Esq.; Commission Counsel: Deborah J. Moreau; and Administrative Assistant Jeannette Longshore.
2. **Minutes:** Approval of minutes from September 17, 2013, meeting. Moved--Commissioner Dailey; seconded--Commissioner Dunkle. Vote 5-0, approved.

3. **Administrative Items**

- (a) **Elections**—Opened by Chair Mishoe. Motion by Commissioner Dunkle to keep current officers in their respective positions to provide continuity for the PIC since the change of counsel in July. Chair Mishoe wanted the Commission to know that she is traveling out-of-state frequently but she would still be attending the meetings and would be available. Commissioner Dunkle responded if the Chair needed assistance with her duties, the Vice-Chairs could help. Seconded—Commissioner Anderson.

Chair—Dr. Wilma Mishoe
Vice-Chair Administration—Commissioner Tobin
Vice-Chair Personnel—Commissioner Gonser

Vote 5-0; approved.

- (b) **Encrypted emails**—to preserve the confidentiality of Commission matters, any communications about specific cases will be through encrypted email. This will reduce the likelihood that information can be hacked or intercepted by others. Confidentiality is statutorily required of the Commission.

- (c) **Trainings:** Delaware Disabilities Counsel, Sept. 24, 2013 (approx. 10 attendees)
Office of Management & Budget, Oct. 8, 2013 (approx. 12 attendees)
DeIDOT, Feb. 7, 2014 (Paradee Bldg)
Office of Management & Budget, Mar. 5, 2014 (Armory Bldg)
Del. Health & Social Services, April 7, 2014 (Smyrna Rest Area)
DeIDOT, May 2, 2014 (Paradee Bldg)

Commissioner Dunkle indicated he would like to see ethics training made available to employees of the courts, Public Defender Office, and the Attorney General's Office.

- (d) **Paperless office**—the Commission discussed the possibility of using electronic notepads for meetings instead of paper files. It was decided that the expense outweighs the savings from reduced paper use.
- (e) **Budget hearing**—PIC's budget was presented by Secretary Bullock at the Office of Management's budget hearing on Nov. 14, 2013. Commissioners may attend future hearings so the Commission can advocate for increased funding.

4. **Executive Session for Lawyer-Client Privilege and to hear confidential requests for advisory opinions and waiver requests.** [29 Del. C. §5807\(a\) and \(c\)](#). Moved--Commissioner Dunkle; seconded--Commissioner Dailey. Vote 5-0, approved.
5. **Lawyer-Client Privilege**—discussed possible investigation of Public Officer. The Commission decided the issue is not ripe for action yet. It is not clear whether [Public Officer] failed to report a reimbursement on his 2012 Financial Disclosure or if reimbursements are due to be filed on the 2013 Financial Disclosure which is due in March 2014. The Commission decided to wait until after the March 2014 filing and review documents to determine if he/she did/should have reported specific reimbursements. If there is an issue with his/her Financial Disclosure it will likely be addressed in a letter asking for clarification.
6. **Lawyer-Client Privilege**—discussed ramifications of Hanson case decision on PIC procedures. PIC will institute more formal proceedings without changing any existing rules. All complaints should be properly sworn. Commission Counsel will call and question witnesses in any upcoming complaint hearings. The Commission doesn't want to enlarge investigatory powers by legislation at this time.
7. **Lawyer-Client Privilege**—discussed possible changes to statutes administered by PIC. The Commission agreed to recommend changes to 29 Del. C. §5833. The statute needs to be updated to reflect the lobbyist's electronic registration and reporting requirements under 29 Del. C. §5832. The Commission also decided to recommend a change to 29 Del. C. §5813(a) to require electronic filing of Financial Disclosures. The Commission discussed the benefits of introducing legislation which would require lobbyist employers to pay an annual registration fee. The proposed legislation would allow the Commission to set the yearly fee. This would allow the Commission to set the fee without asking the legislature to change the legislation every year. The money should be put in a special appropriated fund for PIC. This legislation would affect 29 Del. C. §5832 & §5838(c).

The Commission decided not to propose legislation related to the Dual Compensation Law or to require additional information on the Public Officers annual Financial Disclosures. Legislation to give Commission Counsel the ability to issue opinions which afford legal protection to the applicant was tabled for a day when all Commissioners can attend.

8. 13-41 Post Employment—Previous State Employee

[Employee] recently retired from the Department of Transportation. Her last day of employment at the Department of Transportation (DelDOT) was in September 2013. She recently held an executive position. It was her responsibility to oversee the department's capital transportation program (project design through construction). Her involvement with specific projects or agreements varied, but generally consisted of monitoring project schedules and budgets to ensure design and construction progressed in accordance with the approved annual capital budget and six-year capital improvement program. She was not involved with the procurement or selection of any consultants; however, she was required to approve the final recommendation of the selection committee for a particular agreement. Although she was not involved in negotiating the terms of the agreements or assigning tasks after agreement execution, she was the authorized signatory for DelDOT for most consultant agreements.

[Employee] left her State position to pursue employment in the private sector with one of DelDOT's consultant firms. Her new duties include marketing and supervision of construction inspection services in Delaware and southeastern Pennsylvania. Those services include constructability reviews, claims reviews, general construction administration, assisting with field-related construction issues, recommending and providing required construction inspection staffing, assisting with quality control/assurance procedures, training, and construction program management. [Employee] provided PIC with a detailed list of current agreements between DelDOT and [the consultant firm]. She asked the Commission to determine if she would be violating the Code of Conduct's post-employment restrictions if she worked for [the consultant firm] on agreements which were solicited after termination date, that she did not develop, comment, or discuss with DelDOT employees prior to her retirement.

For 2 years after leaving State employment, State employees may not represent or otherwise assist a private enterprise on matters involving the State, if they are matters where the former employee: (1) gave an opinion; (2) conducted an investigation, or (3) were otherwise directly and materially responsible for the matter while employed by the State. [29 Del. C. §5805\(d\)](#).

The Commission decided the agreements between [the consultant firm] and the State which were executed after [Employee]'s retirement could not be matters she investigated, gave an opinion, or for which she was directly and materially responsible. Therefore, nothing in the post-employment restrictions of the Code of Conduct would prohibit [Employee] from working on those matters. However, [Employee] should be cautioned against revealing any confidential information she learned during her employment with the State. [29 Del. C. 5805\(d\)](#). Moved—Commissioner Tobin; seconded—Commissioner Dailey.

Vote 5-0, approved.

9. 13-47 Outside Employment—State Employee

[Employee] works for the Division of Prevention and Behavioral Health Services (DPBHS) within the Department of Services for Children, Youth and their Families (DSCYF). She provides psychological assessments and consultations for children involved with and referred by DSCYF, Division of Youth Rehabilitative Services, Clinical Management Teams, and the courts. She is an 80% employee with the State and works Monday through Thursday 8am-4:30pm. The evaluations that she conducts through the state are psychological in nature and can include a basic cognitive/achievement measure.

[Employee] also works part-time for [a private employer]. The consulting firm is contracted to provide psycho-educational assessments for two charter schools. Currently, she has only completed assessments for one of the charter schools. The assessments are educational/behavioral in nature and are done on Fridays, which is not a day she is scheduled to work with the State. She does not take phone calls or return emails related to her consulting job during scheduled State work hours. The consulting business does not have any contact with DPBHS. School personnel may have contact with DPBHS if a child is receiving services; however, [Employee] does not take any assessment cases of youths who are involved with DPBHS. If she were to discover that a child was involved with DPBHS she would recuse herself from that evaluation. Additionally, the evaluations conducted through her private position are psycho-educational in nature and can include a basic behavioral/emotional measure.

- (A) State employees with a financial interest in a private enterprise that does business with the State must file a full disclosure as a condition of commencing and continuing employment with the State. [29 Del. C. §5806\(d\)](#). “Financial interest” in a “private enterprise” includes private employment. [29 Del. C. § 5804\(5\)\(b\)](#).

[Employee]’s disclosure form and her comments at the hearing constituted the full disclosure required by the statute.

- (B) Under [29 Del. C. § 5806\(b\)](#), State employees may not accept other employment if acceptance may result in: (1) impaired judgment in performing official duties; to avoid impaired judgment in performing official duties, State employees may not review or dispose of matters if they have a personal or private interest. [29 Del. C. § 5805\(a\)\(1\)](#); (2) preferential treatment to any person; an employee may not represent or assist her private interest before her own agency. [29 Del. C. § 5805\(b\)\(1\)](#); (3) official decisions outside official channels; (4) any adverse effect on the public’s confidence in the integrity of its government.

The client assessments [Employee] completes for the State and for her private employer are qualitatively different. They are designed to determine different aspects of a client’s psychological profile. In addition, in her private position, [Employee] is recusing herself from any client that may be involved with her State agency. The voluntary recusal is necessary for [Employee] to comply with the statute. Otherwise, she may be placed in a position where she would be reviewing and disposing of matters related to a client in her private position that she would also be reviewing in her State position.

The consulting business that employs [Employee] does not have contact with her State agency. While the charter school contracting with the consulting business may have contact with DPBHS, [Employee] has removed any possibility of interaction with her own agency by recusing herself from any clients involved with DPBHS. As a result, she has also eliminated any possibility of preferential treatment and any possibility of official decisions being made outside official channels. Further, as long as [Employee] continues to recuse herself from any matters where a client is involved with DPBHS, it is difficult to see how the public would have any concerns she is not performing her State duties with honesty, integrity and impartiality.

In deciding if the conduct would raise the appearance of impropriety, the Commission also considers whether the Code would be contrary to the restrictions on misuse of public office. [29 Del. C. §5806\(e\)](#). One prohibition considered by the Commission under that provision is the State employee may not use State time or State resources (i.e. computer, fax, phone, etc.) to work on the private business. [Employee] works for the consulting business on Fridays, which is not a scheduled work day in her State position. She also indicated in her disclosure that she does not use State time to complete work for her outside employment.

The Commission decided that [Employee]’s outside employment did not create a conflict of interest with her State position as long as she continues to recuse herself from any assessments of clients involved with DPBHS. She should return to the Commission if her job duties changes. Moved—Commissioner Tobin; seconded—Commissioner Dailey.

Vote 5-0, approved.

10. 13-46 Outside Employment—Public Officer (unable to attend)

[Employee] is currently employed by the State full-time. Employee is appointed by the Governor. She serves as a court-appointed advocate for a special section of the population. Her job duties are statutorily mandated. [Employee] makes legal decisions regarding not only the person, but also the property belonging to the person. When [Employee] participates in mediations the parties involved in the case are usually family members or facilities responsible for the person. Mediation is used to resolve a number of issues related to the person, including finances. [Employee]'s office handles approximately 225 cases per year of the 4000 in [a specific court].

[Employee] recently completed a training course that would allow her to act as a professional mediator. She would like to use this ability to conduct mediations between parties involved in cases that are not assigned to [her office]. [Employee] believes the experience of mediating of these types of disputes would expose her to a different set of issues than those she typically deals with. She confirmed with the [court] that there is a frequent need for mediation in [these types of] cases. [Employee] is willing to have the mediation payments made to [her State agency] rather than to herself personally. She is primarily interested in gaining new experience and using that experience to benefit her public office.

The Commission was concerned because [Employee] is the only [person performing this duty] in the State. If she mediated a matter which ended up being referred to [her office], they would be unable to accept the case because [Employee] would already have an interest in the case. The Commission decided the matter should be rescheduled for January 2014ⁱ, and [Employee] should attend so the Commission can obtain further information from her.

11. Out of Executive Session: Moved—Commissioner Dunkle; seconded--Commissioner Anderson. Vote 5-0, approved.

12. Next meeting – January 21, 2014 (no December meeting).

13. Adjourned

ⁱ The January 2014 meeting was canceled due to weather. This issue was further discussed at the February 2014 meeting.